

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
WHEELING DIVISION**

**BENWOOD-MCMECHEN
HOUSING AUTHORITY,**

Plaintiff,

v.

Civil Action No. 5:18-CV-171 (Bailey)

**GREAT AMERICAN
INSURANCE COMPANY,**

Defendant.

ELECTRONICALLY FILED Oct 11 2018 U.S. DISTRICT COURT Northern District of WV
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NOTICE OF REMOVAL

Defendant, by and through its undersigned counsel, removes the above captioned civil action from the Circuit Court of Marshall County, West Virginia, in which it is now pending, to the United States District Court for the Northern District of West Virginia, Wheeling Division, pursuant to 28 U.S.C. §§1332, 1441, and 1446. Pursuant to 28 U.S.C. §1446(a), copies of all process, pleadings and orders served upon and received by the Defendant are attached as Exhibit A. A copy of the Docket Sheet of the Circuit Court of Marshall County, West Virginia, as of October 11, 2018, is attached as Exhibit B.

As grounds for removal, Defendant states:

INTRODUCTION

1. On September 5, 2018, Plaintiff, Benwood-McMechen Housing Authority ["BHMA"], commenced this action in the Circuit Court of Marshall County, West Virginia by filing a Complaint naming as the Defendant Great American Insurance Company ["GAIC"]. BHMA's Complaint was assigned Civil Action No. 18-C-209.

2. On September 11, 2018, service of the Summons and Complaint was effected upon GAIC via the West Virginia Secretary of State.

3. This Notice of Removal is filed pursuant to 28 U.S.C. §§1441 and 1446 on behalf of GAIC. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1332 because the

parties are of diverse citizenship and the claims at issue exceed the sum of Seventy Five Thousand Dollars (\$75,000.00), exclusive of interest and costs.

THE COMPLAINT

4. The Complaint asserts claims for Declaratory Judgment, Negligence and Breach of the Implied Duty of Good Faith and Fair Dealing. It alleges that BHMA is entitled to an unqualified agreement to indemnify BHMA, under the terms and conditions of a Directors and Officers Professional Liability Insurance Policy, being Policy No. EPP9426315, with respect to any settlement or judgment resolving a civil action filed against BHMA by Celise R. Roxby in the Circuit Court of Marshall County, West Virginia ["Roxby Complaint"]. The Complaint seeks contractual and compensatory damages together with attorney fees and costs incurred in obtaining coverage under Policy No. EPP9426315 and in pursuing the present civil action.

5. All of the claims in the Complaint arise from the alleged failure of GAIC to provide an unqualified defense and indemnification to BHMA, and its employee, with respect to the Roxby Complaint. The Roxby Complaint alleges that there were misrepresentations and omissions made by BHMA, and its employee, regarding the purchase of a property located at 445 Main Street, Benwood, West Virginia. The Roxby Complaint claims that a home inspector hired by BHMA failed to note significant structural, electrical, plumbing and ventilation deficiencies in the home. The Roxby Complaint further alleges that repairs and estimates for repairs needed to meet minimum federal quality standards approximate Thirty Five Thousand Dollars (\$35,000.00). The Roxby Complaint has been amended and it additionally seeks compensatory damages, punitive damages, attorney fees, litigation expenses, interest and court costs against the defendants, including BMHA.

GROUND FOR REMOVAL

6. BHMA is a non-profit, public entity located in Benwood, Marshall County, West Virginia. Complaint ¶1.

7. GAIC is a corporation organized and existing under the laws of the State of Ohio with its principal place of business Cincinnati, Ohio. Complaint ¶2.

8. Based on the relief sought, which includes indemnification for the damages sought in the underlying Roxby Complaint, contractual and compensatory damages, as well as attorney fees incurred in obtaining coverage under Policy No. EPP9426315, and in pursuing this action, the amount in controversy exceeds the sum of Seventy Five Thousand Dollars (\$75,000.00).

9. Because BHMA and GAIC are citizens and domiciliaries of different states and because the amount in controversy requirement is satisfied, removal of this case pursuant to 28 U.S.C. §1441(a) is appropriate based on the diversity of citizenship under 28 U.S.C. §1332.

TIMELINESS OF REMOVAL

10. Pursuant to 28 U.S.C. §1446(b)(1), this Notice is timely, being filed within thirty (30) days of service on GAIC.

11. Pursuant to 28 U.S.C. §1446(d), GAIC is providing written notice of this Notice of Removal to Benwood and a copy of this Notice of Removal is being filed with the Clerk of Circuit Court of Marshall County, West Virginia.

WHEREFORE, notice is given that this action is removed from the Circuit Court of Marshall County, West Virginia to the United States District Court for the Northern District of West Virginia, Wheeling Division.

GREAT AMERICAN INSURANCE COMPANY,

By Counsel

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CERTIFICATE OF SERVICE

I, undersigned counsel for Great American Insurance Company, do hereby certify that on this 11th day of October, 2018, the foregoing “**NOTICE OF REMOVAL**” was served upon counsel of record, via regular U.S. Mail:

Jonathan E. Turak, Esquire
Michelle Marinacci, Esquire
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Counsel for Plaintiff

/s/Jeffrey M. Wakefield
Jeffrey M. Wakefield, Esq. (#3894)